UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE HERTZ CORPORATION	)	
	)	
and	)	
	)	
TSD RENTAL LLC,	)	
	)	
Plaintiffs,	)	
	)	C.A. 07 CV 11793 RGS
v.	)	
	)	C.A. 07 CV 10302 RGS
ENTERPRISE RENT-A-CAR	)	
COMPANY	)	
	)	
and	)	
	)	
THE CRAWFORD GROUP, INC.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to the Court's Scheduling Order issued on June 19, 2008, Defendants Enterprise Rent-A-Car Company and The Crawford Group, Inc. (collectively, "Defendants") provide this disclosure of their preliminary contentions concerning infringement of U.S. Patent No. 7,275,038 ("the '038 patent") by The Hertz Corporation ("Hertz") and TSD Rental LLC ("TSD") (collectively, "Plaintiffs"). This preliminary disclosure is based on information currently known to Defendants.

Defendants' investigation in connection with this lawsuit is continuing, the parties have yet to exchange discovery, and the Court has not yet construed the claims of the '038 patent. At this time, Defendants do not have information sufficient to determine whether Hertz, TSD, or their customers infringe any claims of the '038 patent. For example, Defendants have little or no information regarding (i) the architecture of computer systems maintained and operated by or on behalf of Hertz and TSD and (ii) the features and methods of using EDiCAR and other systems operated by or on behalf of Hertz and TSD. Given the early stage of the case, Defendants base these preliminary infringement contentions on information publicly available to them at this time. Defendants reserve the right to amend and supplement these preliminary contentions based on the Court's claim construction, as well as the receipt of additional information, through discovery or otherwise.

## I.   PRELIMINARY INFRINGEMENT CONTENTIONS

In Plaintiffs' First Amended and Supplemental Complaint ("Am. Compl."), Hertz and TSD admit that "Hertz, working with and through TSD, provides rental car services to insurance companies and to insureds in order to provide replacement rentals." Am. Compl. ¶ 18. Moreover, Hertz admits that it "owns and operates numerous rental car locations in Massachusetts and elsewhere." *Id.* On information and belief, these rental car locations

correspond to or are equivalent to a plurality of geographically remote locations at which a

plurality of rental vehicles are available for rent from Hertz, a rental vehicle service provider.

Plaintiffs further admit that Hertz "has a computerized car rental system that it has

developed and has had in place for years to facilitate its provision of car rental services." *Id.* On

information and belief, this computerized car rental system includes software corresponding to or

equivalent to a fulfillment software program.

There is no dispute that TSD has created, and Hertz uses, a program known as

"EDiCAR" that facilitates "communication between rental car companies and third party

purchasers of rental vehicle services, such as insurance companies." *Id.* ¶19-20. A graphical

image of the EDiCAR system, published by TSD, appears in Figure 1 below. *See also* Ex. A.
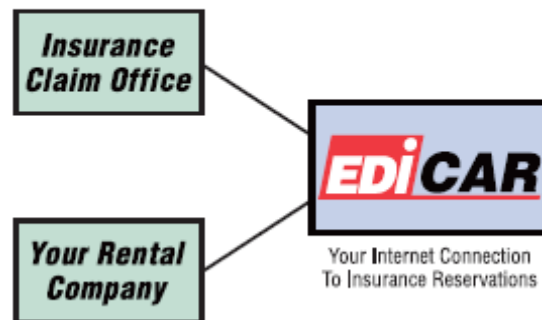
Figure 1: TSD Representation of the EDiCAR System

According to Plaintiffs, the EDiCAR system "connects the in-house rental vehicle

computer systems used by rental car companies, and the computer systems used by the third

party purchasers, and enables the third party purchasers to use their computers to communicate

with respect to replacement vehicle reservations." Am. Compl. ¶19. When connected with

Hertz's in-house computers, EDiCAR allows "Hertz and certain insurance companies to request

and manage insurance replacement car rentals so that Hertz can provide temporary replacement

transportation when insureds' cars are being repaired under insurance claims." *Id.* ¶ 20. Thus,

on information and belief, EDiCAR, as used by Hertz, allows users to create and manage rental-

vehicle reservations.

According to a brochure prepared by TSD, attached as Exhibit A to these preliminary

contentions, EDiCAR allows an insurance adjuster to input a reservation request to a specific

rental vendor. Ex. A at 2. As illustrated, for example, in Figure 2 below, the details of the

reservation request may include information regarding a body shop where an insured's car is

undergoing repair.
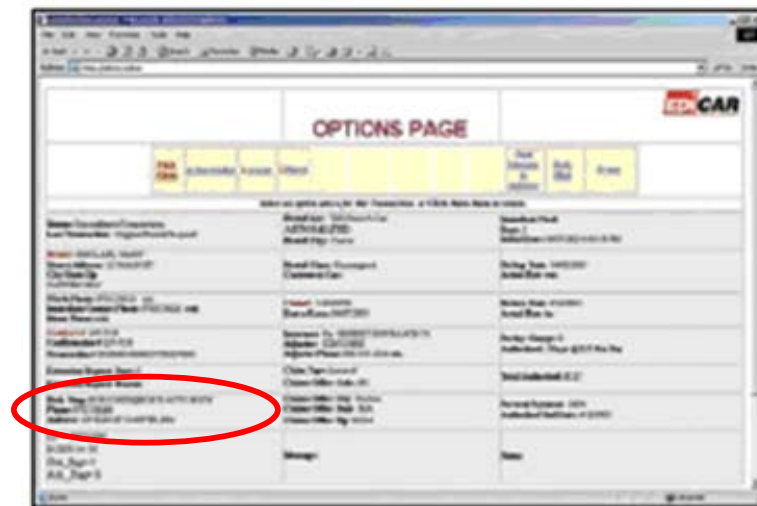
When viewing the details of a reservation request, you
are able to electronically Accept or Reject the reservation,
sending your response directly to the insurance agent.
You can also send a message to the adjuster.

Figure 2: Reservation Details Available in EDiCAR (Annotated)

Figure 2, an annotated version of a portion of Exhibit A, illustrates that the reservation

information presented by EDiCAR may include the name, location, and phone number of a body

shop. Thus, on information and belief, EDiCAR displays data identifying a repair facility where

a third party's vehicle is undergoing repair.

According to TSD, EDiCAR "receives the reservation request and electronically transmits the information to the rental vendor." Ex. A at 2. If the rental car company accepts the reservation, EDiCAR enables "the adjuster and the rental vendor [to] communicate via EDiCAR regarding extensions, authorizations, and other information." *Id.* Moreover, "[w]ith EDiCAR, insurance adjusters . . . can track authorization extensions closely." *Id.* at 3. Thus, on information and belief, EDiCAR displays data including or equivalent to the authorized number of days for open vehicle reservations on computers used by insurance adjusters.

EDiCAR also enables the rental vendor to send electronic invoices to the insurance company. *Id.* at 2. Specifically, TSD states that "[e]lectronic, paperless billing expedites the payment process" and that EDiCAR allows rental companies to close and invoice their agreements online. *Id.* at 3.

As stated, at this time, Defendants do not have information sufficient to determine whether Hertz, TSD, or their customers infringe any claims of the '038 patent. Defendants lack, *inter alia*, information regarding (i) the architecture of computer systems maintained and operated by or on behalf of Hertz and TSD and (ii) the features and methods of using EDiCAR and other systems operated by or on behalf of Hertz and TSD. As discovery in this case moves forward, however, Defendants anticipate learning information sufficient to supplement these preliminary infringement contentions and to amend their Answer to Plaintiffs' Complaint (Case No. C.A. 07 11793 RGS).

Respectfully submitted,
ENTERPRISE RENT-A-CAR COMPANY
and THE CRAWFORD GROUP, INC.

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Dated: August 1, 2008

CERTIFICATE OF SERVICE

I, Beatrice B. Nguyen, certify that **Defendants' Preliminary Infringement Contentions** filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) on August 1, 2008.

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/s/ Beatrice B. Nguyen
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